In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.W.P.No.16109 of 2005
Decided on Oct 31,2006.

Baldev Singh --Petitioner

vs.

State of Haryana and others --Respondents.

Coram: Hon'ble Mr.Justice Jasbir Singh
Hon'ble Mr.Justice Pritam Pal

Present: Mr.Girish Kumar,Advocate,for the petitioner

Mr. S.S.Pattar, Sr. DAG, Haryana.

Mr. G.S.Gill,Advocate,for respondent No.2.

Jasbir Singh J:(Oral)

Shingara Singh-respondent No.5, raised a loan of Rs.38,500/- in the year 1983. Father of the petitioner ,who has died, stood as a guarantor, to secure that loan. Petitioner has laid challenge to Recovery Certificates Annexures P-4 and P-5 , vide which he has been asked to pay an amount of Rs.1,18,818/- to respondent No.2. In the writ petition, further challenge has been laid to the provisions of Section 32-A of the Punjab Khandi Village Board Act, 1955 and Section 3 of the Haryana Public Money (Recovery of Dues) Act, 1979.

At the time of arguments, counsel for the petitioner has not agitated his grievance regarding vires of the provisions, referred to above. It is contention of counsel for the petitioner that

respondent No.2 is competent to charge penal interest only in case amount of loan is misutilised by the loanee. It is not the situation in the case in hand . By referring to the facts on record, he stated that with the loan amount, factory was installed, but due to constraints of the business and bad luck of respondent No.5, he had failed and as such, it cannot be termed as a case of misutilisation of the loan.

Mr.Gill,in reply states that it is a case where loan amount was misused and accordingly, penal interest has rightly been levied against the petitioner.

On perusal of the record and documents put on record by the parties, it is clear that after factory was installed, due to certain reason beyond the control of respondent No.5 or his bad luck, business had failed. There is nothing on record to show that loan amount was not properly used. Petitioner is the son of a surety, who has died, loan amount is Rs. 38,500/- only and amount claimed is more than Rs. 1,20,000/- We feel that was not a case for imposing penal interest by respondent No.2.

Vide circular dated Februry 28,2003, issued by Directorate of Finance, Khandi and Village Industries Commission, Mumbai, it has been notified that only in case of misutilisation of loan amount, penal interest can be imposed, which is not a case so far as the present dispute is concerned.

Accordingly, we allow this writ petition. Documents under challenge are set aside and liberty is granted to respondent No.2 to calculate the amount due from the petitioner, by applying normal

rate of interest, the petitioner then shall pay the same within two months from the date of intimation. On payment so being made, his attached land shall be deemed to have been released. The amount already paid be adjusted towards the amount due.

(Jasbir Singh)
Judge

Oct 31,2006,
RR

(Pritam Pal)
Judge